

Exhibit 2

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

NORTHERN DIVISION

UNITED STATES OF AMERICA

1:11-CR-10022-CBK

Plaintiff,

Aberdeen, South Dakota

-VS-

May 10, 2021

KENDALL LEE WHITE TAIL,

Defendant.

TRANSCRIPT OF
SUPERVISED RELEASE REVOCATION SENTENCING HEARING

BEFORE THE HONORABLE CHARLES B. KORNMANN
UNITED STATES DISTRICT JUDGE

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APPEARANCES:

Counsel for Plaintiff: MR. TIMOTHY M. MAHER
Supervisory Assistant United
States Attorney
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Pierre, South Dakota 57501

Counsel for Defendant: MR. RANDALL B. TURNER
Assistant Federal Public Defender
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Court Reporter: Connie J. Heckenlaible, RPR
Official Court Reporter
225 S. Pierre Street, #217
Post Office Box 7147
Pierre, South Dakota 57501

1 **May 10, 2021**

2 MR. TURNER: We need a Defendant, Your Honor.

3 THE COURT: He should have been in the courtroom.

4 We're starting right on time, 12:30.

5 (Brief pause.)

6 THE CLERK: They're bringing him in, Judge.

7 THE COURT: Okay.

8 MR. MAHER: Your Honor, I have a question.

9 THE COURT: Yes, sir.

10 MR. MAHER: Today may I remain seated to address the
11 Court to stay oriented to the microphone or do you want --

12 THE COURT: Yes -- yes, you may.

13 MR. MAHER: Thank you.

14 THE COURT: And you have been fully vaccinated as you
15 told me?

16 MR. MAHER: Yes, Your Honor.

17 THE COURT: Mr. Turner, that's true of you also?

18 MR. TURNER: Yes, Your Honor.

19 THE COURT: Okay. And I know that the court reporter
20 and the clerk have been.

21 We're not allowing anybody in the courtroom or chambers
22 who have not been fully vaccinated.

23 Be sure to have the Defendant in the courtroom ready to
24 go on time, Marshal.

25 DUSM KINNEY: On my schedule, sir, it says "bond" --

1 THE COURT: It says what?

2 DUSM KINNEY It said "bond". So we just have to get our
3 paperwork straightened out.

4 THE COURT: It says "bond"?

5 DUSM KINNEY: Yes, sir.

6 THE COURT: What does that mean?

7 DUSM KINNEY: It means that he was out on this -- out
8 on bond. We thought he was going to show up on his own.

9 THE COURT: Well, I don't think that's right. He's
10 been in custody.

11 DUSM KINNEY: Yeah, that's correct. Yep.

12 THE COURT: And you have been fully vaccinated, ma'am?

13 DUSM KINNEY: Me?

14 THE COURT: Yes.

15 DUSM KINNEY: Sir, I respectfully decline to answer
16 that.

17 THE COURT: All right. You may leave the courtroom
18 immediately.

19 DUSM KINNEY: Okay, sir, I'll have to take him with me
20 then.

21 THE COURT: No, you won't. I told the Marshal what to
22 do on that and you should follow those orders.

23 DUSM KINNEY: Go back and tell Kolb, please.

24 May we have --

25 THE COURT: Don't come in this courtroom again unless

1 you're fully vaccinated. Do you understand that?

2 DUSM KINNEY: Yes, sir.

3 THE COURT: All right. You may leave.

4 Leave the Defendant where he is.

5 DUSM KINNEY: Judge, I can't leave him alone.

6 THE COURT: Yes, you're going to do exactly what I tell
7 you to do or you will be in custody yourself. If you don't
8 have a marshal here that's fully vaccinated, that's your
9 problem, not mine.

10 You may leave, ma'am.

11 DUSM KINNEY: Judge, I can't leave a prisoner in here.

12 THE COURT: Yes, you will. I'm going to give you 10
13 seconds to leave this courtroom.

14 (Brief pause.)

15 THE COURT: Don't come back here unless you're fully
16 vaccinated.

17 What's your name?

18 DUSM KINNEY: Deputy Kara Kinney.

19 THE COURT: Okay.

20 DUSM KINNEY: I'm going in my -- can you come relieve
21 me? He can't be left sitting alone.

22 THE COURT: Have you been fully vaccinated?

23 DUSM KOLB: Yes.

24 THE COURT: Okay. Thank you. Appreciate that.

25 I told -- I told the Marshal -- he sent me an email

1 sometime ago and I told him I don't want anybody in the
2 courtroom, including U.S. Marshals, who have not been fully
3 vaccinated.

4 DUSM KOLB: Okay.

5 THE COURT: She should not have shown up here today.

6 DUSM KOLB: Okay. I wasn't aware of that that she
7 wasn't.

8 THE COURT: Oh, okay. The Marshal didn't pass that on
9 to you?

10 DUSM KOLB: Okay. I'll do that.

11 THE COURT: Yeah. Thank you. Appreciate it. Okay.

12 All right. This is a hearing in the case of United
13 States of America versus Kendall Lee White Tail. He is
14 personally present with his attorney -- excuse me -- Randy
15 Turner; and the Government is represented by Assistant United
16 States Attorney Tim Maher.

17 Mr. White Tail, did you read and receive a copy of the
18 Supplemental Presentence Investigation Report and the Addendum
19 as prepared and filed by the probation officer and the report
20 from -- or the progress report, I guess, from the Rosebud Sioux
21 Tribe Methamphetamine Program? I think that's -- oh, and the
22 Report and Recommendations from the Magistrate Judge, which is
23 Doc 136; and the Fourth Petition to Revoke your supervised
24 release.

25 Did you read and receive a copy of all those items,

1 sir?

2 THE DEFENDANT: Yes.

3 THE COURT: Is that true of counsel for both sides as
4 well?

5 MR. MAHER: Yes, Your Honor.

6 MR. TURNER: Yes, Your Honor.

7 THE COURT: And likewise, I have read and received a
8 copy of all those items.

9 Now, he had previous revocations. On the first
10 revocation, he received a sentence of seven months; the second
11 revocation proceeding, he was sentenced to a period of custody
12 of nine months; and on the third revocation, he was sentenced
13 to a period of custody of 15 months. He's been in custody 71
14 days. There are no objections filed.

15 Is there anything other that either side has by way of
16 evidence?

17 MR. MAHER: None from the Government, Your Honor.

18 MR. TURNER: I do, Your Honor.

19 THE COURT: Okay.

20 MR. TURNER: I would call Ed Parsells to the stand. He
21 just assured me he's been fully vaccinated.

22 THE COURT: Who is he, sir?

23 MR. TURNER: Ed Parsells is -- he's the program
24 director at the Rosebud Sioux Tribe Methamphetamine Treatment
25 Center, although that's up in the air. I'll have him describe

1 that. He's an expert on treatment.

2 THE COURT: That's fine. You may do that.

3 MR. TURNER: Thank you. Ed Parsells. And he did the
4 progress note that we filed earlier.

5 THE COURT: Yes.

6 MR. TURNER: Thank you.

7 ED PARSELLS, DEFENDANT'S WITNESS, SWORN

8 THE WITNESS: My last name is P-A-R-S-E-L-L-S.

9 DIRECT EXAMINATION

10 Q (By MR. TURNER) Your first name is Ed, right?

11 A Ed.

12 Q Ed, would you just tell us what your back -- your education
13 background is.

14 A I have a bachelors of science in behavioral sciences, a
15 double major, and also Bible theology.

16 Q Okay. What's your current position?

17 A It's called the unit supervisor of the Rosebud Sioux Tribe's
18 Long Term Meth Rehabilitation Program, basically administrator
19 and clinical supervisor.

20 Q How long have you been involved in helping people with
21 addictions?

22 A I had my first full-time job in 1981.

23 Q Okay.

24 A Been in the field continuously ever since.

25 Q How long have you been down at Rosebud?

1 **A** This -- it's a little complicated. This last time I came --
2 I was working for the federal government in Indian Health
3 Services, a substance abuse specialist, until 2002. I came
4 back to the Rosebud in 2002, and have worked continuously on
5 the Rosebud Reservation in a variety of capacity, all of them
6 in providing substance abuse services since then.

7 **Q** Okay.

8 **A** Most recently, 2016, I was asked to evaluate the Tribe's
9 meth rehab program that ended its funding. I evaluated the
10 program and they asked me if I would be willing to serve as the
11 director. So I did. Since 2016 I've been the director of the
12 meth rehab program.

13 **Q** Now, I understand in the past that there have been some
14 problems with funding. Is there currently a problem with
15 funding?

16 **A** Just that we have too much money and not enough staff of
17 people applying to hire. We have a surplus of funding right
18 now.

19 **Q** Okay. So -- and as I understand it, the program is in a bit
20 of flux. Would you please tell me what that is.

21 **A** It's very complicated, but the executive director of the
22 Tribe's alcohol and drug treatment program philosophically
23 opposes the funding sources. One of them, we had a million
24 dollar contract with the State of South Dakota to provide meth
25 treatment services in year one. In year two, that was reduced

1 to 660,000 because we weren't using it. The executive director
2 opposes that contract. And we also have --

3 THE COURT: Who is this person, sir?

4 THE WITNESS: Her name is Marcita Eagle Bear.

5 THE COURT: She's the executive director of what?

6 THE WITNESS: The Rosebud Sioux Tribe's Alcohol and
7 Drug Treatment Program. We are a subcomponent within her
8 organization.

9 THE COURT: She doesn't want you to be operating?

10 THE WITNESS: She doesn't want state funding. She says
11 it compromises tribal sovereignty.

12 So recently, April 22nd, the Tribe removed the meth
13 program out from under her authority and placed it under health
14 administration. So the Tribe's health administration is now
15 going to provide oversight for the meth treatment program.

16 It's caused a lot of stress, many staff have left. And
17 I'm -- I'm uncertain if I'm going to stay past May 22nd.

18 Q (By MR. TURNER) Okay. Is -- tell me if you're operating and
19 if so, whether you have actual patients in an inpatient
20 capacity there.

21 A Yes, we are operating right now. I have a contract
22 credentialed supervisor and we have a full staff, but no
23 full-time counselor right now. But we are -- we are operating.

24 We have three -- three patients right now. And we were
25 supposed to have an admission day today, but everything is kind

1 of put on hold.

2 **Q** Because --

3 **A** We do have the three in-house right now. We're going to
4 keep them and continue to treat them as long as I'm there.

5 **Q** Okay. And because of these changes, as I understand it,
6 Kendall had to go back to the Winner County Jail for a while
7 and you had to provide services remotely. Can you explain
8 that.

9 **A** Right. He -- well, we weren't sure exactly what our future
10 held, but I think they're going to try to keep the program
11 going. But we did, we let all of the patients go. Some of
12 them we transferred to outpatient services and Kendall
13 evidently didn't qualify. We had some on federal supervision
14 also that went to outpatient services and our staff provided
15 those outpatient services.

16 But Kendall was not allowed to participate in that
17 program so he was incarcerated. But we're -- we're hoping --
18 and a footnote, I have decided to go ahead and reengage my
19 private practice so I will be doing a meth residential
20 treatment program hopefully in June and I do have a facility
21 and we're moving in that direction.

22 **Q** And would that be on the Rosebud Reservation?

23 **A** Yes, in Mission, South Dakota.

24 **Q** All right. And if that is going, who might be able to take
25 Kendall; would that be you or would that be the meth --

1 **A** Yes, our program is called Lakota Care and it was my private
2 practice, I have that. And I will have a staff -- a
3 credentialed staff. We'll be accredited by the State of South
4 Dakota.

5 **Q** It will be residential?

6 **A** It will be residential, yes.

7 **Q** Okay. Now, when we first got -- and to back up a little bit
8 about the program down there, has it won some awards or does it
9 have some recognition as a model program?

10 **A** Yes. I had the good fortune of being surrounded by some
11 really high caliber experts in the field. Cardwell Nuckols is
12 a leading neuroscientist, a researcher. He's well published
13 for meth and opioid -- treating meth and opioid addiction. I
14 met him, he was intrigued by our program and he kind of adopted
15 us, made himself available. He served as a mentor since the
16 beginning. So he's helped shape and make sure that our program
17 is -- it meets the highest standards as far as, you know, how
18 we operate. He's still a part of our program.

19 And the Rosebud Hospital was going under so they
20 contracted with Boston Mass General Hospital to provide
21 physicians. Those physicians were also available to our
22 program. And they serve as the medical director. We call them
23 the Boston docs. They come from Harvard -- or Boston Mass
24 General. Some of them are actually faculty at Harvard Medical
25 School.

1 So we've been involved with them for about five years.
2 Boston Mass General asked me to go to their hospital in Boston
3 and train their physicians, nurses, and anybody else on staff
4 that was interested in how we did meth. They don't have a big
5 problem with meth up there, it's an emerging problem, so they
6 asked me to come and I spent three days teaching in there. I
7 didn't realize that Harvard Medical School had staff and
8 faculty in attendance, but evidently we got talked about.

9 I got a call from the White House. And they
10 evidently -- when Trump came on, he wanted to know what was
11 working in the field. He contacted Harvard Medical School.
12 And they recommended and referred our program to him. So --

13 **Q** So you are training on the best practices for the continuum
14 of care for meth treatment, it sounds like?

15 **A** Yeah, SAMHSA, the national -- the federal agency for
16 substance abuse and mental health, they want to publish a
17 treatment guide for treating methamphetamine. So they did a
18 search nationwide. And our program was one of three that was
19 selected as a model treatment program for stimulant use.

20 **Q** And so when you go train people, it's a couple of days it
21 sounds like of training other people how to treat people for
22 meth?

23 **A** I do two-hour Zoom webinars, up to three days of on-site
24 training to train other treatment programs on how we
25 effectively treat methamphetamine.

1 **Q** Okay. Ed, when we first got Kendall into treatment -- and
2 he's been asking our office for treatment during all these
3 prior revocations, we managed to get him in and I was under the
4 impression and in fact in the presenting situation, it mentions
5 16 weeks of residential meth specific treatment and he started
6 in December, which he would have been done before today which
7 was kind of my thought. Can you tell me why that's not the
8 case for Kendall?

9 **A** I want to first apologize I didn't make that more clear.
10 The minimum for our program is four months, sixteen weeks. The
11 maximum is one year. So our program is literally from four
12 months to one year long.

13 **Q** Where is Kendall in that -- in that continuum, in that
14 process?

15 **A** Okay. So if somebody comes to us highly motivated with
16 minimal cognitive impairment or residual brain damage literally
17 from the meth, they potentially could be treated in four
18 months. If there's cognitive impairment, meth related
19 psychosis, protracted withdrawal, post-acute withdrawal, if
20 there are psychiatric issues at work, those have to be worked
21 through before they can effectively begin treatment.

22 Kendall came to us -- he obviously had some good
23 upbringing. He's got some social skills. He was polite,
24 cordial, and we call it using compliance as a defense. He
25 would flatter. He would compliment, and he would tell us

1 exactly what he thought we wanted to hear. But we perceive
2 that as superficial because the content of his engagement in
3 therapy as well as his written assignments were superficial so
4 we knew there were issues there.

5 The other thing he seems to have been cognitively
6 impaired and also amnestic disorder. We didn't know if it was
7 related to meth or some other issue, but he does have memory
8 problems.

9 So the psychologist is meeting with him weekly
10 evaluating him, attempting to engage. He was having episodes
11 of depression and also PTSD, nightmares, night terrors, and
12 mood disturbance that seemed to progress. I mean, he was
13 suppressing them when he first got to us, but you can only do
14 that for so long.

15 We got him in December and by the end of January, he
16 had a couple of severe anxiety attacks. And the last one -- he
17 had three serious anxiety attacks. The last one was scary. I
18 had a staff quit, a staff resign over that encounter. She was
19 afraid of him. But -- he was not out of control, but he was
20 refusing directives and in a hyper state emotionally, very
21 distraught and upset and angry. I came in late that night -- I
22 believe it was a Saturday night -- and I escorted him to the
23 emergency room. And he had to be medicated.

24 And then the doctor started adjusting his medications.
25 They'd been adjusting it before, but with the psychologist --

1 we have two psychologists on staff -- and the psychologist
2 worked with the emergency room physician and they put him on
3 some really psychotropics, antipsychotic medication, he seemed
4 to be cognitively impaired with paranoia, mood disturbance and
5 rational reasoning were diminished.

6 So they put him on this new medication, which he
7 responded fairly well to. They've been adjusting it. And I
8 believe it was two weeks ago or might be three weeks now, I
9 don't remember exact date, but Dr. Foster, our psychologist,
10 met with him and she said for the first time she believed he
11 was now ready to engage treatment.

12 **Q** So I take it from that, I mean, you mention that he seemed
13 to have a good upbringing, but I look at his history and it's
14 awful, I mean he grew up with violence in the home and
15 obviously he's turned to drugs and alcohol. Are you saying
16 that there's been breakthroughs and that some of that stuff is
17 finally coming out?

18 **A** Superficially he knows how to be polite. Deep down there's
19 a dark side to Kendall. And the psychologist believes a lot of
20 that is rooted in childhood trauma, abuse, and other things
21 that he's been exposed to in childhood that we're hoping to
22 treat.

23 **Q** Have you seen progress; have you had breakthroughs?

24 **A** Yes. Yes. Especially most recently. Like within the last
25 30 days that we had him, the psychologist said he was opening

1 up to some of that trauma. He refused to talk about it
2 previously.

3 **Q** If you get your own residential care open, are you willing
4 to accept Kendall as a patient in a residential, you know, it's
5 not in custody, but it's a controlled environment and continue
6 with his treatment?

7 **A** Absolutely. I think he has the potential of being a success
8 story for meth treatment. I believe that.

9 **Q** That's based on, I mean, I don't want to know -- I can't
10 imagine how many patients you've had over the years. I'm
11 assuming you don't say that about all of them.

12 **A** No. No and yeah, and -- yeah. But he's demonstrated the
13 kind of progress that we want to invest in. And he's gone
14 through a lot. And even with us, I mean, he's chosen to stay.
15 And I know the legal leverage helped put the fence up, but
16 beyond that, he seems to be ready for the kind of change that
17 he needs for a sustained recovery from meth addiction.

18 **Q** So his asking us to get him into treatment over and over
19 again was maybe not just manipulating the system, but an actual
20 desire to improve himself?

21 **A** Right. And you know the past experiences with his history,
22 I mean, he resorts to medicate his emotional pain of the trauma
23 of his past with mood altering chemicals. If we can get
24 that -- those issues resolved, you know, that's going to help
25 him sustain recovery and abstinence from all mood altering

1 substances.

2 **Q** Assuming he is allowed to complete that treatment, how long
3 do you expect he would need to be in a residential type
4 facility with you or through the Rosebud Sioux Tribe in order
5 to address those issues and have a chance of being successful?

6 **A** Well, now that we have him where we believe we can engage
7 him at the level that he really needs and he's cooperating,
8 four to six months is what I would hope for.

9 **Q** So if -- I mean, if we're at four to six months of
10 treatment, can you compare that to where he might go if he's
11 four to six months in a federal penitentiary somewhere?

12 **A** Or --

13 **Q** If you can't, you can't.

14 **A** It's difficult. You know, he's -- but I -- usually in the
15 federal system what patients have told us is that anything that
16 they've had before is out the window because of the need to
17 survive in that system. The things that they learn about
18 treatment are not useful. So it would have a detrimental
19 effect on him for sure.

20 **Q** Is there anything else about this particular case -- well,
21 let me ask you this. What's your best estimate as to the
22 ability of somebody down there getting him into a residential
23 treatment facility in terms of time from today?

24 **A** Again, it's hard to predict, but if I am at the meth
25 treatment center, then, you know, we'll have him until he's

1 done. If I -- I'm going to open up my private practice and if
2 the current meth treatment program goes under or deteriorates
3 or whatever, I intend to have a residential meth treatment
4 program and I'm going to continue doing meth treatment. I love
5 this work. I love this field.

6 **Q** And any idea how long it might take you to get that open?

7 **A** I'm hoping by mid June. Something -- we'll know something
8 by mid June, but within two to three weeks we'll have an
9 indication of which direction the meth treatment will be
10 provided on the Rosebud, either in my private practice or
11 through the Tribe.

12 **Q** If the money is there, I'm assuming somebody will find a way
13 to open up a treatment center?

14 **A** Right.

15 **Q** Whether state dollars or federal dollars, it seems like they
16 spend the same, but the money is there?

17 **A** Right.

18 MR. TURNER: Okay. That's all I have right now.
19 Thanks, Judge.

20 THE COURT: Cross-examination, Mr. Maher?

21 MR. MAHER: None, Your Honor.

22 THE COURT: All right. You may step down, sir.

23 THE WITNESS: Thank you, Your Honor.

24 (Witness excused.)

25 MR. TURNER: Did I miss anything, Ed?

1 THE WITNESS: I don't think so.

2 MR. TURNER: Okay. Sorry, Judge.

3 THE COURT: That's all right.

4 Any further evidence that you have?

5 MR. TURNER: No evidence, Your Honor.

6 THE COURT: Any further evidence -- any evidence by the
7 Government now based on what the Defendant has presented?

8 MR. MAHER: No, Your Honor.

9 THE COURT: Okay. Thank you.

10 Comments, Mr. Maher.

11 MR. MAHER: Your Honor, this is a homicide case wherein
12 the Defendant was convicted of manslaughter, killing his
13 brother. Intoxication was an issue in the underlying matter
14 that the Court was looking hard at and I looked through the
15 prior PSRs and notes that he's had psychiatric treatment in
16 Kentucky, meth and alcohol and substance abuse and domestic
17 violence have been on the Court and Probation Office's mind
18 during his years with this Court.

19 And so when he commenced his fourth period of
20 supervision in June of 2020, within two months he was back
21 using meth and admitting that. And then by October of last
22 year, the police received a report that the Defendant was
23 shirtless in McLaughlin, and of all things, in possession of a
24 knife and swinging it around.

25 So this Defendant is more than a mild public safety

1 concern. And if he's having a major anxiety issue in meth
2 treatment where staff are walking away, he needs to maybe think
3 about making some choices about how he interacts with people
4 and treats people.

5 But then we can learn from that night when he was
6 arrested, that the BIA officers were looking for him and there
7 was an extended cat and mouse game where he was harassing the
8 community and then ultimately, arrested after he drops to his
9 knees, but not before he twists around and smacks the officer
10 in the side of the torso and face and shoulder and then tries
11 to kick at the officer. Now, we can blame that all on
12 methamphetamine and his trauma, but he's also making some
13 choices in there. He's making some choices to not work the
14 plan, cooperate with his probation officer.

15 And this Court in other situations has -- in other
16 cases has tried to be lenient with defendants and give mild
17 sentences and then more severe and then more severe, trying to
18 get their attention. And this Court would be well within its
19 rights and track record of doing something beyond the three to
20 nine months guideline calculation as it's done in other cases
21 where the defendant just declines to work the program and where
22 we can't get his attention. He is more than a mild safety
23 concern.

24 Thank you, Your Honor.

25 THE COURT: Thank you, Mr. Maher.

1 Mr. Turner, any comments that you have, please.

2 MR. TURNER: I do, Your Honor.

3 My client is more than a mild safety concern and I
4 understand that. He's going to be more than a mild safety
5 concern when he gets out of prison. The question is where do
6 we go from here.

7 His choices all along have been trying to get into
8 treatment, he's been asking us. He's been cooperating with
9 Probation from what I can tell from the PSI.

10 His problems stem from a childhood of terrible abuse
11 which led to alcohol and drug use and he's -- and the alcohol
12 and drug use leads to the violence which he grew up with. He
13 gets violent.

14 From the progress report, the last adjustment seems to
15 have relieved symptoms of meth related psychosis. Dr. Rebecca
16 Foster reports he is now stable enough to now fully engage in
17 treatment.

18 So the question here isn't whether he's not a danger.
19 He clearly has been and he clearly will be unless he gets the
20 kind of treatment that he needs and we've got that now. We can
21 still hold things over his head, but he's in a residential
22 program or he was until the last couple of weeks, and he can go
23 back to one.

24 So the question is, over the next six months, which
25 letter here says, if he continues to engage treatment fully,

1 his projected completion date is November 3rd. That's six
2 months from now. So the question is over the next six months,
3 is he in prison where he is exposed to and subject to and led
4 towards violence, is he exposed to and subject to and led
5 towards drugs.

6 I want to make clear that we have had more and more
7 clients coming in that say they have drugs available in the
8 federal penitentiary. I've got one who said he had never seen
9 heroin until he tried it in the pen. He got hooked on meth; he
10 got hooked on heroin in the pen.

11 At a residential facility, he's been under control, he
12 hasn't been using drugs and he's learning how to deal with the
13 problems that lead to his violence. Those are our options.
14 Six months with Ed or six months in the penitentiary. Six
15 months, eight months, ten months, twenty months from now, he's
16 going to be on the streets. If the Court wants to hold
17 something over his head -- and I realize that this is the third
18 time, but he's been --

19 THE COURT: Fourth time.

20 MR. TURNER: Fourth time. But -- well, yeah, the --
21 the -- and he tried to get into treatment, but COVID also had
22 some issues with that. But we've gotten him in. And we've got
23 one of the best professionals in the nation committing to work
24 with him.

25 I can see a couple ways. We can put this off for

1 couple weeks, three weeks, as Ed says, we will know where that
2 program is going, get in place. We can even continue the
3 sentencing out beyond that to hold that over his head. If we
4 address some of these issues, in the future he's a lot more
5 likely to come out and not be violent in the future. That's
6 what I'm asking for the opportunity to do. And that's what
7 he's asking.

8 THE COURT: Even though he would remain in custody of
9 course?

10 MR. TURNER: Well, he would remain in the residential
11 treatment program, I assume -- oh, yeah, no, of course. I'm
12 not asking for him to be released now unless it's into a
13 residential treatment facility. You put him back on the
14 street, he's going to fall off of the wagon that they've put
15 him on.

16 So, you know, the sentence can be to complete the
17 treatment, but we're not quite sure where the treatment thing
18 is now. There's plenty of money out there, they just need to
19 get it up and running.

20 So what I'm asking for is a continuance of this hearing
21 today for three weeks or so. If we can get him in beforehand,
22 we'll make a motion to furlough him back into a residential
23 program because it makes a lot more sense to be a resident
24 there than in a penitentiary system somewhere. Thank you.

25 THE COURT: Thank you, Mr. Turner.

1 Well, it sounds to me like the program at Rosebud is in
2 a state of flux to put it mildly. That's unbelievable that the
3 head of the program is claiming some matter of tribal
4 sovereignty interfering with people's healthcare. Who cares
5 where the money comes from? As they say, you don't look a gift
6 horse in the mouth. The State of South Dakota is not
7 attempting to interfere with the programs of the Tribe, at
8 least in this instance. That isn't always true by any means,
9 but there's no indication that the State is trying to dictate
10 something.

11 I think what Mr. Turner says is correct. Of course, I
12 could revoke and give him a sentence of 24 months. I guess
13 that's the first I've heard of that drugs are that readily
14 available in federal institutions run by the BOP, but could
15 well be. I don't know.

16 When I saw this Defendant the first, second, or third
17 time -- I can't recall now -- I made a note to myself in the
18 papers, "this Defendant is a very dangerous individual." And I
19 still think that's right. I mean, this situation with stabbing
20 his brother to death, stabbing him seven times -- I recall the
21 case very well. I don't remember a lot of these cases, but
22 this one I do. And he had tried to kill his brother a short
23 time before that, as I recall.

24 He has grown up in a terrible environment, which
25 unfortunately is true for so many people, Native Americans

1 included, where the judge should be inclined often times to put
2 the parents in jail. But at some point, Mr. White Tail is
3 responsible for his own activities regardless of what he grew
4 up with.

5 Under the -- first of all, I adopt the Report and
6 Recommendation of the Magistrate Judge, that's Doc 136, and I
7 grant the Petition to Revoke his supervised release for the
8 fourth time. That's Doc 132.

9 I clearly don't want these tribal officers or anybody
10 else being mistreated by a prisoner or a defendant, which is
11 what happened here. More violence.

12 He's been in custody now for 71 days. Unfortunately,
13 the period of supervised release here is limited by law. I
14 can't give him more supervised release than five months less
15 whatever sentence I impose on him today. So that's a handicap
16 imposed by Congress on the Court. I don't understand it.

17 As I said many times, I don't know why Congress doesn't
18 try to run their own business, which they have a terrible time
19 doing, without trying to tell the courts what to do.

20 So I guess I would see no problem with continuing this
21 hearing until we know more about what the situation is at
22 Rosebud. In the meantime, he's going to stay in custody -- in
23 federal custody of the Marshals Service.

24 So that's what I'm going to do. And then we'll wait
25 for further information. I'm going to continue this hearing

1 for two months and then we'll have more information. Clearly,
2 this Defendant should not be running at large out on the
3 street. And I'm going to do my best to see that he isn't, but
4 maybe he can be saved. I appreciate the optimism of the expert
5 witness here. He's much more optimistic I guess than I am, but
6 maybe. We, of course, always are hesitant to throw the key
7 away, so to speak, and give up on somebody, but Probation and
8 others have made monumental efforts here to try to get this
9 Defendant straightened around and to act like a normal human
10 being and they haven't had any success at all thus far.

11 So I am going to continue this sentence hearing for
12 about at least two months. Then I'll look at it again. I may
13 continue it further after that. I'll await hearing from Mr.
14 Turner as to what's going on at Rosebud and certainly the
15 witness is certainly free to contact the Court directly if he
16 wants to to keep me advised as to what is available at Rosebud.

17 So that will be order of the Court. This hearing is
18 continued. We will issue a written order to that effect.

19 Anything further from counsel?

20 MR. MAHER: No, Your Honor.

21 MR. TURNER: No, Your Honor.

22 THE COURT: Thank you. The hearing is adjourned. And
23 you may be excused.

24 I appreciate the Marshal stepping in and taking care of
25 things here. We're not looking for any confrontations here,

1 but I'm going to see that things are run correctly in this
2 courtroom.

(Conclusion of Hearing at 1:09 p.m.)

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1 STATE OF SOUTH DAKOTA)

2)

CERTIFICATE

3 COUNTY OF HUGHES)

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6 I, Connie Heckenlaible, Official United States District
7 Court Reporter, Registered Professional Reporter and Notary
8 Public in and for the State of South Dakota, do hereby
9 certify that the Transcript of Supervised Release Revocation
10 Sentencing Hearing contained on the foregoing pages 1 through
11 27, inclusive, is a full, true and complete transcript of the
12 above-entitled proceedings.

13 I further certify that I am not a relative or employee
14 or attorney or counsel of any of the parties hereto, nor a
15 relative or employee of such attorney or counsel; nor do I
16 have any interest in the outcome or events of the action.

17 IN TESTIMONY WHEREOF, I have hereto set my hand and
18 official seal this 26th day of May, 2021, at Pierre, South
19 Dakota.

20

21 /s/ Connie Heckenlaible
22 Connie Heckenlaible
23 Registered Professional Reporter
24 225 S. Pierre Street, #217
Post Office Box 7147
Pierre, South Dakota 57501
(605) 945-4627
25 Connie_Heckenlaible@sdd.uscourts.gov

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